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Who Knows What Tomorrow May Bring?

Congress returns today from its two-week spring recess for a four-week work period leading into summer and the Memorial Day holiday. With only eleven work weeks before the House breaks for the August recess and less than two months until the first Democratic presidential debates for 2020, there's a lot that has to be packed into May. While the appropriations process continues with the hopes of bills moving at least to the House Floor in the next few months, this month also will see continued repercussions from the Mueller Report with testimony later this week from Attorney General William Barr, a potential appearance by Mueller himself at some point in May and a fight over whether former White House Counsel Don McGahn and other White House aides will testify. Congressional committees have robust schedules planned (expected Senate Banking and House Financial Services Committees plans are below), and the regulators are also starting to look at 2020 and the need to have rules and regulations finalized by this time next year to thwart any potential Congressional Review Act challenges if there's a new occupant in the White House in 2021. We highlight these and other issues below as we briefly preview what we believe will be the focus in Washington, subject as always to external or unexpected events that could disrupt the schedule.

Expected Senate Banking Committee (SBC) Activity

SBC Chairman Crapo (R-ID) kicks off his spring hearing agenda this week with a focus on the regulatory process and use of guidance by financial regulators. Crapo, and Sens. Tillis (R-NC) and Toomey (R-PA) have been very active and critical in examining how financial regulators use guidance and have previously challenged certain guidance documents. For example, Sen. Tillis has challenged the Federal Reserve's process for identifying and then examining banking organizations in the Large Institution Supervision Coordinating Committee program. Last Congress, Sen. Toomey challenged the prudential regulators' leveraged lending guidance for failing to meet Congressional Review Act (CRA) requirements. We expect members to closely examine concerns with how agencies follow the Administrative Procedures Act as well as raise concerns with some guidance documents having the effect of a rule. As will be discussed in more detail below, this hearing also syncs up with recent Trump Administration action on regulations and processes at federal agencies.

On May 15th, SBC will kick-off a two day hearing schedule for the prudential regulators as SBC and the House Financial Services Committee (HFSC) explore recent actions by the agencies. In the Senate, we expect Chairman Crapo and Republicans to continue to push for full implementation of the provisions of the regulatory reform bill from last Congress (S. 2155) and to encourage the regulators to move faster on completing a rewrite of the Volcker Rule, reforming the Community Reinvestment Act, and following up on issues raised at the Committee's hearing on the regulatory process. Democrats, on the other hand, are expected to sharply criticize the Office of the Comptroller of the Currency's (OCC) efforts to reform the Community Reinvestment Act, and Ranking Member Brown (D-OH) will likely criticize the Federal Reserve's foreign bank tailoring efforts, among other items. And finally, May also will be the official kick-off of the committee's bipartisan efforts to examine privacy issues in the financial services sector – we look at this issue in a little more detail below.

Expected House Financial Services Committee (HFSC) Activity

As she has done during her brief tenure heading HFSC, Chairwoman Waters (D-CA) has set forth the expected schedule for her committee over this next work period:

- This week will see a full committee hearing focused on the country's housing infrastructure needs and subcommittee hearings looking into payday lending (Consumer Protection and Financial Institutions Subcommittee), auto lending and the use of credit scores in auto insurance determinations (Oversight and Investigations Subcommittee), and how diversity and inclusion have a positive impact on the bottom line of businesses (Diversity and Inclusion Subcommittee).
- Next week will see a hearing focused on concerns about redlining in housing (Housing, Community Development and Insurance Subcommittee) as well as the full committee's second mark-up where we expect consideration of legislation regarding BSA/AML compliance (more details are below), beneficial ownership and legislation to address concerns by Democrats of the direction that the Consumer Financial Protection Bureau (CFPB) has gone under the Trump Administration (the Consumers Choice Act), among others.
- Later in May, the Investor Protection, Entrepreneurship and Capital Markets Subcommittee will look at proposals to strengthen workers' rights, and the National Security Subcommittee will hold a hearing on sanctions. That same week, the prudential regulators will follow up their appearance in front of SBC with an appearance before the full HFSC.
- As of now, the only scheduled hearing for the last week of the work period is the first testimony of Housing and Urban Development (HUD) Secretary Ben Carson in front of the Waters-led HFSC, where he is sure to be questioned extensively on issues such as housing discrimination and the Administration's approach to fair housing.

Aside from these hearings and the mark-up, we also expect to see the task forces focused on FinTech officially formed with Rep. Lynch (D-MA) heading up one focused on FinTech generally, and Rep. Foster (D-IL) leading one focused on AI. Rep. Hill (R-AR) is expected to head these efforts for Republicans.

Expected House Floor Activity

Along with taking up retirement savings reform (the SECURE Act, which is discussed below), the House is expected to focus on some key Democratic priorities over this work period, including legislation to affirm support for the Paris climate accord and direct President Trump to develop a climate change plan (Climate Action Now Act), the Equality Act to prohibit discrimination on the basis of sex, gender, and sexual orientation, and potentially legislation to address DACA – the American Dream and Promise Act – which would block the Trump Administration's efforts to end the program and provide a pathway to citizenship for DACA recipients (among others). On the financial services front, after HFSC acts, the full House may consider the Consumers First Act CFPB reform legislation. It probably goes without saying, but aside from the SECURE Act, the Senate is highly unlikely to consider any of these measures, making them mainly messaging bills for Democrats. Additionally this month, the House also may consider legislation related to health care and prescription drug costs, disaster relief funding and an extension of the National Flood Insurance Program, which expires on May 31st.

Nominations

In a further use of the "nuclear option" to limit debate in the Senate, Senate Republicans on a party-line vote changed Senate rules to speed up the consideration of nominations. The new rules will permit only two hours of "post-cloture" debate, instead of the previous 30 hours, for virtually all Executive Branch officials other than Cabinet Secretaries – including independent agencies such as the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and Federal Reserve Board Governors (excluding the Chair).

The Senate Agriculture Committee approved Heath Tarbert's nomination to serve as Chair of the CFTC on April 1st by a voice vote. The White House has made it a priority to have him confirmed by the full Senate in June or July, and he will benefit from the new expedited confirmation procedure. We expect that Stephen Moore's potential nomination to serve as a Federal Reserve Board Governor will continue to receive significant media attention, but it is unclear whether President Trump will ever formally nominate him.

Former SEC enforcement official Allison Lee has been tapped to fill the vacant Democratic Commissioner seat at the SEC. A confirmation hearing date has yet to be announced, and it is unlikely that SBC Chairman Crapo will hold a hearing until there are other nominations that can be considered at the same time.

Housing Finance Reform/Government Sponsored Entities (GSEs)

House finance reform continues to receive a lot of attention in DC as a result of consistent congressional and Administration steps. In April, Mark Calabria was sworn-in as the Director of the Federal Housing Finance Administration (FHFA). Calabria gives the Trump Administration control of FHFA for the first time during his presidency, and Calabria moved quickly by bringing over a seasoned hand in HUD Senior Advisor Adolfo Marzol to be Deputy Director. Calabria and Marzol have been key components of the Administration's housing finance working group in their previous roles and will now control Administration policy from new perches. They have a few major initiatives to address in the near term as they get settled. First off, June is the go-live month for the single security – TBA trading began occurring in March, and the single security will be a reality in June. FHFA will need to closely monitor market adoption and address any disruption, but we expect FHFA to remain committed to June as the go-live month. Second, Calabria will need to address the proposed enterprise capital rule. The proposed rule is the first major signal from the FHFA on the capital structure for the GSE's in a post-crisis world. Finalization of the rule is a key component of any long-term strategy to recapitalize and release the GSEs, should that be the reform path that is ultimately chosen.

While Calabria gets settled, Treasury and HUD are busy drafting responses to the Presidential Memorandum on Housing Finance Reform – both - she are engaging stakeholders and will make legislative and administrative recommendations to reform the housing finance system. We expect these reports to be finalized in the next 2-4 months. Like the previous Treasury reports on financial regulation, we see the housing finance report as identifying key issues and laying out a menu of options for Congress and the Administration. Our view is that the congressional recommendations are unlikely to move the needle on legislative action, but administrative reform recommendations may demonstrate to Democrats the breadth of unilateral authorities the Trump Administration has if they don't engage with Republicans to craft a legislative solution.

In Congress, SBC Chair Crapo continues to work to build bipartisan support behind the scenes on a legislative reform package. March saw SBC hearings on this topic, but we don't expect many more hearings on this issue in the coming months. Rather, Crapo will need to build a working coalition of bipartisan members similar to his process for successfully passing S. 2155. We expect May to provide some clarity on whether this working group will ultimately come together. In the House, HFSC Chair Waters has prioritized affordable housing issues over housing finance reform – late last week she released draft legislation to invest over $90 billion in affordable housing programs. Our view is that she will not engage on housing finance reform unless there is progress in the Senate by a bipartisan group.

Retirement Savings

Prospects are bright for a bipartisan package of reforms to ERISA provisions governing 401(k) plans. Last month, the House Ways and Means Committee passed H.R. 1994, the SECURE Act, introduced by Chairman Neal (D-MA), Ranking Member Brady (R-TX), and Reps. Kind (D-WI) and Kelly (R-PA). As highlighted above, House Majority Leader Hoyer (D-MD) has announced plans to bring the bill to the House floor in May. While not identical, this legislation largely lines up with the Retirement Enhancement and Savings Act (RESA) introduced by Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR). These provisions have passed the House and Senate previously but finally seem on track to pass on a stand-alone basis later this year and be enacted into law.

The bills are intended to encourage more employers to offer work-based 401(k) plans, and more employees to participate in them, by reducing costs and regulatory burdens. A key provision in both bills would amend "multiple employer plans," or "MEPs," to allow employers to join together to sponsor a single retirement plan for their workers. Another common provision would create a new fiduciary safe harbor to encourage employers to include lifetime-income products within plans. The House bill would increase the mandatory distribution age from 70½ to 72.

Looking even further ahead, the leadership of the Ways and Means and Finance Committees would like to take up additional retirement provisions once this legislation has been completed. Chairman Neal has in the past supported "Auto IRA" legislation, under which employers not offering 401(k) plans would be required to enroll employees automatically into IRA accounts. Senators Wyden, Warner (D-VA) and other Members are also interested in promoting savings for gig employees and self-employed individuals, such as through universal accounts that would not be tied to employment.

BSA/AML

As mentioned briefly above, Bank Secrecy Act/Anti-Money Laundering legislation will once again be a focus for HFSC during the upcoming work period. We understand that Rep. Maloney's (D-NY) beneficial ownership bill, the Corporate Transparency Act, will likely be included in the markup on May 8th, and it is possible that BSA/AML legislation from Chairwoman Waters will also be included. Negotiations are ongoing between the majority and minority, and likely will be up until the markup, but we understand both sides are trying to come to an agreement on the bills.

Privacy

Privacy continues to remain an important topic of discussion around Washington heading into the spring. Late last week, Facebook announced it expects to pay between $3-5 billion – the largest ever FTC penalty for privacy violations – to settle ongoing investigations over how it handled consumer data. Companies are still struggling to figure out whether a federal privacy standard will make it into law, especially with the 2020 Presidential campaign hitting full swing. In the Senate, the Commerce Committee continues to try and find compromise on a federal floor, and SBC is reviewing submissions it received from stakeholders on what aspects of consumer privacy should be addressed by their committee. Senate Commerce will holding a hearing May 1st on consumer perspectives of a federal privacy framework, and SBC will hold a hearing May 7th focused on Europe's General Data Protection Regulation hoping to find out what does and doesn't work from the world's most notable standard. At this hearing, we expect SBC to clearly define their jurisdiction and signal the scope of their upcoming work.

Sanctions

Additional sanctions continue to be a real possibility, and the imposition of any additional sanctions – in any jurisdiction – largely depend on geopolitical events outside of Washington. However, Congress will still be active in assessing the Administration's use of its sanctions authorities as it utilizes them to address security and foreign policy challenges. To that end, as mentioned above, HFSC plans to hold a hearing on sanctions May 15th.

Outside of Congress, the following is a synopsis of recent sanctions actions taken by the Trump Administration.

- *Iran* – Most recently, the Trump Administration declined to renew sanctions waivers that allowed South Korea, Japan, India and China to purchase Iranian oil. This action combined with the recent designation of the Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization is designed to further cripple the Iranian economy in an effort to force Iran to renegotiate the disarmament of its nuclear program.

- *Venezuela* – In addition to certain current or former government officials, the Trump Administration sanctioned the Central Bank of Venezuela to apply pressure to the Maduro regime. In an accompanying release, Treasury Secretary Mnuchin said, "Treasury is designating the Central Bank of Venezuela to prevent it from being used as a tool of the illegitimate Maduro regime, which continues to plunder Venezuelan assets and exploit government institutions to enrich corrupt insiders." As another measure to cut off funding to the Maduro regime, the Administration also sanctioned four companies transporting oil from Venezuela to Cuba and identified nine vessels, owned by the four companies, as blocked property.

- *China* – China and the US continue high-level talks led by China's Vice-Premier Liu He, Secretary Mnuchin and Trade Representative Lighthizer. The group has been in talks for months in an effort to end the escalating trade tensions between the two countries. In addition to attempting to narrow the trade imbalance, the US has been pushing China to make structural reforms to allow US companies greater access to the Chinese domestic market, reduce requirements for technology transfers, and better enforce intellectual property rights of foreign rightsholders. While discussions are ongoing, the two sides have halted further increases in tariffs citing sufficient progress in the negotiations. Current expectations are that the negotiations could conclude over the summer leading to a joint signing ceremony between President Trump and President Xi.

Trade – USMCA

On April 18th, the US International Trade Commission submitted its analysis of the economic impact of the USMCA. The report found that the USMCA would increase real GDP by $68.2 billion and create 176,000 US jobs. While production of the report was one of many hurdles the USMCA has to overcome to become law, it still has a long road ahead and the clock for the next steps won't begin until Trump officially submits the report to Congress, which he can do at any time. It's unclear whether a majority of Congress will be on board with approving the deal, but if it becomes apparent that Congress will not consider the USMCA on its own, Trump still has the ability to force its consideration by Congress through formally noticing withdrawal from NAFTA.

OMB Memo on Regulations and Guidance

On April 11th, the Office of Management and Budget (OMB) issued a memorandum to executive agencies addressing certain issues for compliance with the Congressional Review Act (CRA). The memorandum outlined the CRA's various requirements for submitting certain agency documents (e.g., rules and guidance) for review by the Office of Information and Regulatory Affairs (OIRA). Further, the memo highlighted two noteworthy steps agencies must take to remain compliance. First, the memorandum reminded agencies that compliance with the CRA requires the submission of certain documents to Congress. Second, the memorandum outlined a more detailed process and emphasized how it would address cost-benefit analysis of rules under OIRA review.

Our view of the OMB memorandum is that it was issued for two strategic reasons. First, OMB identified the lack of consistency with which agencies were submitting rulemakings for review. Reminding agencies of their obligations to submit rulemakings for review enhances the leverage and control that OIRA can have over the rulemaking process. Further, if followed by executive agencies, it centralizes sign-off power with the White House. The second strategic reason for the memorandum is to protect Trump Administration agency actions from future CRA challenges by Democrats. Last Congress, Republicans opened the door for challenging agency guidance documents for failure to comply with the CRA. By instituting a more consistent process during the last two years of President Trump's current term, agency actions will have additional protection if the Senate flips to Democrats and the House remains under Democratic control. As the memorandum is implemented, it will be important to watch how independent agencies approach the OIRA submission requirement. Historically, independent agencies under Republican and Democratic Administrations have been reluctant to follow certain OMB directives that lead to additional White House control.

Regulatory Agenda

Financial regulators have a number of items in the pipeline that they may begin to finalize over the next few months. First, we expect the prudential regulators to put out a proposed rule to reform the other CRA – the Community Reinvestment Act. It is our understanding that the Federal Deposit Insurance Corporation (FDIC) has made significant progress, and the Federal Reserve's renewed participation has helped accelerate the process. We also expect a decision soon on whether the revamped Volcker Rule will be finalized or rewritten and reproposed, which is looking more likely. We may gain some clarity on this issue when the prudential regulators testify before the Senate and House later this month.

Also on the agenda is the SEC's investment advice reform proposal – Regulation Best Interest (Reg BI). Democrats continue to show concern that the rule still does not go far enough, although SEC Chairman Clayton has displayed confidence that the rule is adequate. We anticipate the timeline to extend beyond May on the final proposal, as it is likely to be deemed a major rule and therefore will be subject to the OMB process. The Federal Reserve Board also will consider a number of factors in deciding whether to approve a proposed rulemaking regarding change in control of bank holding companies, which would better clarify the standards and criteria in the Board's rules for determining control of a banking organization.

Appropriations

Both the House and Senate Appropriations Committees will continue work on the funding process in May. The House subcommittees will continue with budget request hearings during the first part of the month, and the full Committee also will begin marking up bills during the work period. House Democrats have set an aggressive agenda for Floor consideration of the funding bills – they would like to complete the process by the August recess, but in order for this to happen they need to begin moving bills through the Committee this work period. The Senate also will continue with budget request hearings during the first two weeks of May – while Senators have finalized their requests to the Committee, markups have not yet been scheduled.

As always, the picture for how the twelve funding bills will be reconciled between both Chambers is murky, and even more so this year as the House and Senate likely will be writing the bills with differing topline numbers absent a budget caps agreement (which is necessary to prevent automatic cuts due to sequestration). A funding agreement must be reached before September 30th to avoid another government shutdown. Complicating this picture is the debt ceiling, which current estimates project will need to be raised around the same time as current funding expires.